

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LORI M. METZSCH,

Plaintiff,

v.

AVAYA, INC.,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

4:02CV592

MEMORANDUM AND ORDER

The plaintiff, Lori M. Metzsch, has filed a Notice of Appeal (filing no. 367) and a motion to proceed on appeal in forma pauperis. (Filing No. 368.) This court has not previously granted the plaintiff leave to proceed IFP in the district court, and Fed. R. App. P. 24(a)(3) therefore does not apply to this appeal.¹

Plaintiff has appealed no fewer than seven times in this matter. Importantly, the Eighth Circuit determined that Plaintiff's most recent appeal was frivolous pursuant to 28 U.S.C. Sec. 1915(e)(2)(B)(I). (Filing No. 355.)

¹Fed. R. App. P. 24(a)(3) states:

(a) Leave to Proceed in Forma Pauperis

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless the district court – before or after the notice of appeal is filed– certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

In light of these facts, the court finds that Plaintiff's appeal is not taken in good faith and therefore denies Plaintiff's motion to proceed on appeal IFP. (Filing No. 368.) However, the plaintiff may file a motion pursuant to Fed. R. App. P. 24(a)(5) with the Eighth Circuit and again request leave to proceed IFP on appeal. Rule 24(a)(5) states:

(5) Motion in the Court of Appeals. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

IT IS THEREFORE ORDERED THAT:

Plaintiff's motion to proceed on appeal in forma pauperis (filing no. 368) is denied. The Clerk of the court shall provide the Court of Appeals with a copy of this memorandum and order.

September 5, 2007

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge